

UNIVERSITY OF WARWICK

For the meeting of the Senate to be held on 13 June 2018

Final Report from the Senate Sub-Group on Statute 24Summary

The Senate is invited to consider the report of the Sub-Group on Statute 24. Approval of revisions to Statute 24, related Ordinance and all-staff policies reflecting the recommendations made here will be sought separately by the University. In particular, the Sub-Group invites comment on:

- The formation of an Academic Freedom Review Committee (AFRC) as a permanent sub-committee of Senate;
- The proposed role of AFRC in disciplinary and redundancy processes as set out below;
- The further recommendations detailed below.

1. Introduction and context

At its meeting of 14 June 2017, the Senate resolved to establish a sub-group to address the concerns raised by the Assembly about proposed reforms to statute 24. At the same meeting, Senate agreed the membership of the sub-group. At its meeting of 5 July 2017, the Senate approved the terms of reference of the sub-group, and noted the principles emerging from the work that the sub-group had undertaken to date (paper S.87/16-17 refers). The terms of reference and membership of the sub-group are appended to this paper for reference (appendix A).

The sub-group undertook to:

- Seek to address the concerns raised by the Assembly and the wider Academy on the proposed reforms;
- Take the opportunity to consider how process can be improved to ensure that outcomes are robust and timely;
- Develop proposals that reflect the aim of achieving a consistent policy framework for all staff, but with the inclusion of detailed process in Ordinance to provide appropriate consideration of cases where academic freedom may be at issue, as well as clear definitions of misconduct that are not within the scope of academic freedom policies, and hence to which all staff policy and procedure applies.

Interim reports were provided to Senate at meetings in October 2017, January 2018 and March 2018 indicating progress to date, emerging key principles informing the sub-group's work and indications of likely recommendations.

Following detailed discussions within the sub-group and between it and the Vice Chancellor, Provost, members of Council and other members of the university community, the sub-group is now in a position to make a final report to Senate. The sub-group wishes to thank all involved in these discussions for their time and input and put on record our particular gratitude to the assistance of Pippa Glover before her departure from the University.

The sub-group is, however, solely responsible for this paper. In particular, we wish to emphasize that the formation of the sub-group has not supplanted the need for further consultation with the Assembly and Trade Unions once revised statute, Ordinance and policies have been drafted.

2. Outcomes of the sub-group discussion and consultation

The sub-group has considered and consulted on the University's proposals in relation to the reforms of Statute 24 and related Ordinances, focussing particularly on the impact of these reforms on the principle of academic freedom. The group has considered examples of case studies relevant to academic freedom.

In so doing the sub-group have considered the nature and complexity of the interplay of academic freedom within the proposals for academic redundancy, disciplinary and grievance processes.

In light of these considerations, the sub-group has formulated a set of principles to inform revision of Statute 24 and related Ordinance and policies and set out

3. Principles

The sub-group unanimously agreed the following principles, which we recommend be used as the basis for further revision of Statute 24:

- The need for a specific article in revised statute to protect academic freedom;
- Reference in the revised statute to Ordinance in which the detail will be set out of the mechanism by which academic freedom will be protected by a Senate level review, to be known as the Academic Freedom Review Committee (AFRC);
- That the relevant Ordinance detailing the work of AFRC will set out its position within disciplinary and redundancy procedures in detail;
- That it should be the responsibility of AFRC, in its first annual report to Senate, to formulate explicit principles and definitions of misconduct and gross misconduct and which recognise the responsibilities of academics to third-parties as well as their employer (see Appendix B for suggested drafts of principles and definitions);
- The power of AFRC to decide that disciplinary or redundancy processes should cease in the event of it deciding that the academic freedom of an individual appears to be in question;
- That there should be no double jeopardy in a disciplinary or redundancy case. If AFRC decides the process should halt due to concerns about academic freedom, the case or parts thereof identified by AFRC as potentially contravening academic freedom cannot be rewritten and resubmitted;
- That the role of the Head of Department in redundancy and disciplinary processes be subject to scrutiny and oversight;
- That Senate approval be sought for our report, including these principles and the detail of the processes which follows below;

- That the proposed text for Statute 24 and related Ordinances be the subject of consultation between the University, Assembly and appropriate Trades Unions, and that Senate approval be sought for these texts;
- That any revised Statute 24 cover all members of the University covered by the current Statute. We are aware of the issues relating to fixed-term and indefinite contracts subject to funding, but feel that these are matters deserving of specific attention and are not within the terms of reference of the sub-group;
- That Senate approval be required for any future significant changes to the University's policies and procedures governing its employees, whether described in statute, Ordinance or policy, and that this requirement be formalized in statute.

4. Academic Freedom Review Committee (AFRC)

The establishment of the AFRC is a key recommendation of the sub-group. We recommend that AFRC be a standing sub-group of Senate and comprise all elected academic members of Senate, with a Chair elected on an annual basis by its members.

An AFRC panel will be convened as and when redundancy and disciplinary cases arise. When convened, the Chair of AFRC will chose 3 members according to a strict rotation schedule, initially drawn up alphabetically, to adjudicate the case. Members that are in the same department as the individual or individuals subject to disciplinary or redundancy procedures will be excused. Should all 3 members selected to adjudicate a case be drawn from the same faculty, the third member will be excused. Members that have served and newly elected members of Senate will be added to the bottom of the rotation list. Members that were excused under the circumstances set out above will remain at their original position on the list. In addition to the voting membership, AFRC will include a non-voting secretary appointed by the Registrar. AFRC will be able to call for independent external advice from other members or the University or beyond.

In addition to its casework, a full meeting of all AFRC members will be convened on an annual basis to discuss and approve an annual report to Senate, and elect a new Chair or re-elect the incumbent Chair for the following academic year. The annual report will offer oversight of the operation of procedures relating to academic freedom, and provide guidance on working definitions of the principles of academic freedom arising from specific cases (while respecting the privacy of all concerned).

AFRC needs to be properly supported and trained in order to fulfil our intention that it becomes the impartial guardian of academic freedom in relation to staffing matters. The Registrar's office should provide such support, including a non-voting member of AFRC to act as secretary when cases are being adjudicated.

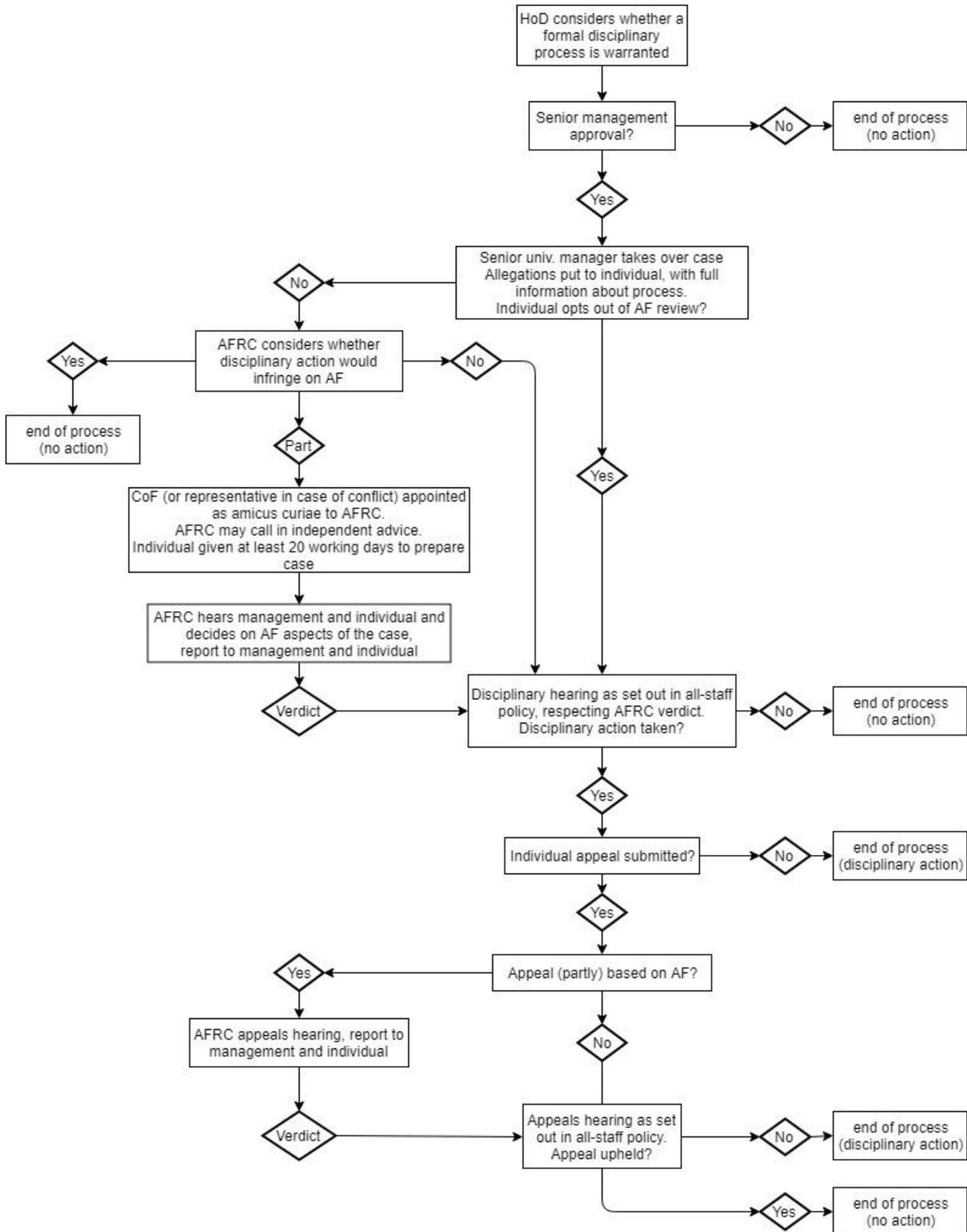
Due to the differing nature of disciplinary and redundancy cases, AFRC's role in each will be somewhat different. Detail of this follows in the next section.

We expect the workload of AFRC to reduce significantly over time as working definitions and precedents are established.

5. Role of AFRC in Disciplinary Cases

The flow chart below sets out the sub-group’s recommendation for the place of AFRC within disciplinary cases.

Figure 1. AFRC’s recommended role in disciplinary cases



We recommend that the process set out above be prescribed in Ordinance.

We further recommend that disciplinary cases only proceed to a formal stage with the approval of a member of senior management, which in this instance we expect to normally be the Provost but could instead be a Pro-Vice Chancellor or other senior professor in the University appointed to act in this capacity by the Vice Chancellor. The same individual will then take responsibility for taking the case forwards, a role that in our discussions we have likened to that of a prosecutor (in the same analogy, AFRC plays the role of a jury).

AFRC will operate on an opt-out basis at its first stage; an individual subject to disciplinary proceedings who does not wish AFRC to consider their case will notify AFRC in writing of their decision to opt-out. AFRC will otherwise be convened in accordance with the process set out above.

If AFRC is convened, the stipulated role of the Chair of Faculty as amicus curiae is intended to provide oversight of the process. The stipulated timings are intended to strike a balance between allowing individuals to properly prepare for meetings and for timeliness in the overall process. Where recourse to all-staff policy is noted, this policy is subject to Senate approval and should include:

- The right of individuals to bring individual support to any stage of the formal disciplinary process including AFRC (e.g. work colleague, union representation, or academic expert);
- The right of individuals to comparable legal representation if the University opts to retain legal representation;
- The right of appeal.

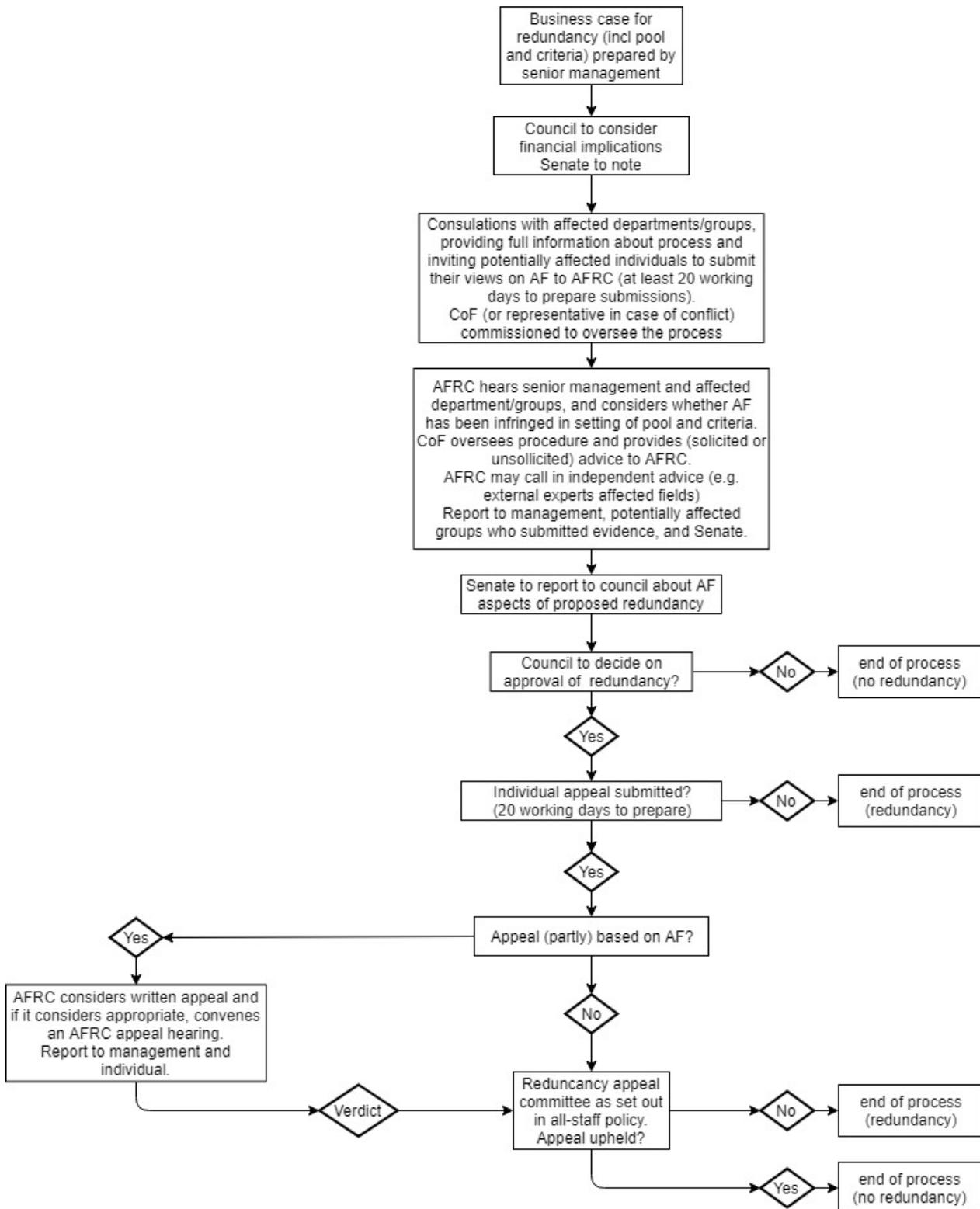
As further information regarding the reasons for the disciplinary case being brought could emerge as the process continues, an individual can opt for an appeal against disciplinary action on the grounds of academic freedom regardless of their earlier decision to opt-in or –out of the AFRC process at the initial stage. Should an appeal on the grounds of academic freedom be made, AFRC will be convened with new members from the rota, but these new members may ask for a briefing from those members that heard the case in the initial stage.

6. Role of AFRC in Redundancy Cases

We again recommend that the process set out in the flow chart below be prescribed in Ordinance. Under the redundancy process, AFRC has three roles. As well as considering the arguments of potentially affected individuals at an initial stage and the appeal stage in line with that stipulated for disciplinary cases, AFRC will also consider whether academic freedom has been contravened in the setting of the criteria used to determine whether or not redundancy is necessary and the establishment of a pool of posts at risk of redundancy as a result. Senate will provide a report to Council based on the findings of AFRC prior to Council taking a decision to proceed to redundancy.

As with the disciplinary procedure, the all-staff policy on redundancy is subject to Senate approval and to include the same allowances for individual support, legal representation and right of appeal as set out for the disciplinary cases above.

Figure 2. AFRC's recommended role in redundancy cases



7. Areas for further work

In addition to the provision of revised, statute and Ordinances in line with the processes set out above, we note that the following work needs to be tackled and that all are beyond the purview of our sub-group:

- Consideration of the terms of employment and statutory protection for academic colleagues on fixed-term contracts and permanent contracts linked to funding;
- Training for AFRC members, including its non-academic secretaries;
- Training for HoDs and senior managers to be involved in disciplinary and redundancy cases;
- Wording of definitions of misconduct and gross misconduct. Appendix B provides suggested drafts, but this is a task for AFRC in its first annual report.
- Wording of revised statute and Ordinance to reflect the recommendations made in this report.

8. Recommendations

We recommend that the Senate:

- Approve the formation of the Academic Freedom Review Committee (AFRC) as a standing sub-group of Senate;
- Recommend to the Council that the processes for disciplinary and redundancy cases set out above be written into revised Ordinance;
- Consider, as soon as practicable, a revised Statute 24, Ordinance and all-staff policies that reflect the contents of this paper;
- Note that these revised documents be subject to formal consultation with relevant Trades Unions and the Assembly, prior to approval by the Senate.

Professor Dan Branch
Chair, on behalf of the Senate Sub-group on Statute 24

5 June 2018

Appendix A: Membership and Terms of Reference of the Senate Sub-Group on Statute 24

Membership

Professor Dan Branch
Professor Aileen Clarke
Professor Maureen Freely
Philippa Glover
Professor Saul Jacka
Dr Thijs van Rens

Terms of Reference

- 1) To consult with and inform Council about academic freedom and its applicability;
- 2) To make recommendations to Senate for revisions to Statute 24 and associated Ordinances and Council-approved procedures (Disciplinary, Grievance and Redundancy procedures);
- 3) To recommend those matters relating to the potential dismissal of an academic member of staff that will be defined as not being at risk of potential conflict with academic freedom;
- 4) To review and make recommendations on proposed disciplinary and redundancy procedures in the light of the above.

Appendix B: Suggested Definitions of Principles and Definitions of Academic Freedom, Misconduct and Gross Misconduct.

As noted above, in the course of the Statute 24 working group's deliberations it became clear that clarification of certain principles and definitions will be necessary for AFRC to operate. The working group agreed that providing such definitions was outside its scope and that it was for AFRC to provide working definitions of these terms and establish precedents for use in specific cases. These principles and definitions are offered to provide a foundation from which AFRC can work.

Draft Principles for Academic Freedom

1. The university must provide rigorous and powerful protection from any effort to interfere with academic freedom, within or outside the university. This includes:
 - (a) The protection of the right of academics to exercise their academic judgment and to pursue, possibly unsuccessfully, novel or difficult lines of inquiry.
 - (b) The protection of the right of academics to challenge perceived wisdom.
 - (c) The protection and defence of the highest standards of academic freedom when conducting academic activities outside the university, including those in other institutions and jurisdictions.
 - (d) Reference to standards of academic freedom upheld by professional accrediting bodies.

2. Academics are expected to uphold the seven principles of public life
 - Selflessness;
 - Integrity;
 - Objectivity;
 - Accountability;
 - Openness;
 - Honesty;
 - Leadership;

These principles apply to an individual's conduct in their post as an academic. Assessment as to whether they are satisfied in an individual case is a matter of judgement, rather than merely the application of a rule.

3. Academic judgment involves responsibilities to respect and implement traditions of evidence and argument. This will be reflected in what is protected under academic freedom.
 - (a) Academic freedom protections will apply to scholarship, including creative work that is part of research or teaching, the search for and accumulation of evidence, and to evidence-based arguments.

- (b) Asserting the principle of academic freedom is not about protecting misconduct: it should give protection to investigation, thoughts, opinions, argument and their expression but not, in general, to other actions.
- (c) Not everything an academic says is said in an academic capacity: consequently, protection for academic freedom is not the same as protecting free speech, although the two principles are often intertwined.

A draft definition of Academic Freedom

Academic Freedom is the freedom of academics, while maintaining a strict regard for the truth,

- to pursue knowledge via scholarship and research without fear or favour, including the freedom to subject both the work of others and public beliefs to scrutiny;
- to question authority;
- to question and test received wisdom;
- to put forward new, controversial or unpopular ideas and opinions;
- to pursue difficult or risky lines of investigation;

and

- to invent or innovate in ways that may not necessarily be successful; without placing themselves in jeopardy of losing their jobs and privileges.

There is a widespread expectation that academics will discharge their duties to their subject, to fellow academics, to their employer and to the wider public while strictly upholding the seven principles of public life.

Draft definitions and principles related to the disciplinary code

Misconduct

Misconduct shall mean actions which constitute wilful or negligent non-performance of duties. This includes: failure to follow reasonable instructions; consistent tardiness or non-attendance at relevant activities; and persistent failure to follow *well-documented* University procedures.

Gross Misconduct

For academic staff, gross misconduct shall mean actions which substantially and egregiously breach one or more of the seven principles of public life.

This includes: serious criminal conduct; abuse of power (whether that power is informal or is derived from authority, position or membership); failure to treat other members of the University community fairly and with dignity and respect; the prevention of the legitimate expression of views by members of the University or others.

Principles

These should have respect for the principles of equity, representation, consistency and auditability. So

- there should be established rules of procedure;
- a suitably anonymised annual report should be made to Senate;
- legal representation should be permitted and other support, including union representation, should be permitted and facilitated;
- there is a right to appeal any decision negatively affecting a member of staff;
- an accurate record of proceedings and their constituent investigations should be kept;
- staff should be excluded from campus in only the most extreme circumstances and not just because someone else deems their presence “unacceptable”.